

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR

# HOUSE BILL NO. 1728

## 93RD GENERAL ASSEMBLY

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Reported from the Committee on Commerce, Energy and the Environment, May 2, 2006, with recommendation that the Senate Committee Substitute do pass.

4834S.04C

TERRY L. SPIELER, Secretary.

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### AN ACT

To repeal section 386.700, RSMo, and to enact in lieu thereof three new sections relating to the public counsel.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 386.700, RSMo, is repealed and three new sections  
2 enacted in lieu thereof, to be known as sections 386.202, 386.700, and 386.715,  
3 to read as follows:

**386.202. No commissioner or employee of the public service  
2 commission who is responsible for regulating or making  
3 recommendations on the regulation of gas, electric, water, or telephone  
4 utilities shall be employed by any public utility, as defined in section  
5 386.020, engaged in such areas of regulation for a period of no less than  
6 two years after the individual has completed his or her employment  
7 with the commission.**

386.700. 1. The director of the department of economic development shall  
2 appoint a public counsel to serve at the pleasure of the director of the  
3 department. The public counsel shall be an attorney at law licensed to practice  
4 law in this state and whose salary shall be fixed by the department director  
5 within the appropriation made therefor.

6 **2. The director may remove the public counsel for inefficiency,  
7 neglect of duty, or misconduct in office, giving to the public counsel a  
8 copy of the charges against him or her and an opportunity of being  
9 publicly heard in person or by counsel, in his or her own defense, upon  
10 not less than a ten-day notice. If the public counsel shall be removed,  
11 the governor shall file in the office of the secretary of state a complete**

12 statement of all charges made against the public counsel, and his or her  
13 findings thereon, together with a complete record of the proceedings.

386.715. 1. The public counsel shall, prior to the beginning of  
2 each fiscal year, make available to the commission an estimate of the  
3 expenses to be incurred by the public counsel during such fiscal year,  
4 reasonably attributable to the regulation of public utilities as provided  
5 in this chapter and chapters 392 and 393, RSMo, and shall also  
6 separately estimate the amount of such expenses directly attributable  
7 to such regulation of each of the following groups of public utilities:  
8 electrical corporations, gas corporations, water corporations, heating  
9 companies, telephone corporations, telegraph corporations, sewer  
10 corporations, and any other public utility as defined in section 386.020,  
11 as well as the amount of such expenses not directly attributable to any  
12 such group.

13 2. For fiscal years 2008, 2009, and 2010, the public counsel shall  
14 allocate to each such group of public utilities a share of the estimated  
15 expenses for each year using the same allocation as the public service  
16 commission. For each fiscal year after fiscal year 2010, the public  
17 counsel shall allocate to each such group of public utilities the  
18 estimated expenses directly attributable to the regulation of such group  
19 and an amount equal to such proportion of the estimated expenses not  
20 directly attributable to any group as the gross intrastate operating  
21 revenues of such group during the three preceding calendar year bears  
22 to the total gross intrastate operating revenues of all public utilities  
23 subject to the jurisdiction of the commission, during such calendar  
24 years. The commission shall then assess, on behalf of the public  
25 counsel, the amount so allocated to each group of public utilities,  
26 subject to reduction as provided in this section, to the public utilities  
27 in such group in proportion to their respective gross intrastate  
28 operating revenues during the preceding calendar year. The total  
29 amount so assessed to all such public utilities shall not exceed two  
30 hundredths of one percent of the total gross intrastate operating  
31 revenues of all utilities subject to the jurisdiction of the  
32 commission. Notwithstanding subsection 2 of section 386.370 to the  
33 contrary, the total assessment for both the public counsel and the  
34 commission shall not exceed one-fourth of one percent of the total gross  
35 intrastate operating revenues of all utilities subject to the jurisdiction

36 of the commission. Nothing in this section shall authorize the public  
37 service commission to determine how the office of public counsel  
38 allocates the estimated expenses directly attributable to the regulation  
39 of public utilities described in subsection 1 of this section or how the  
40 assessment imposed under this section is spent by the office of public  
41 counsel.

42       3. On behalf of the public counsel, the commission shall render  
43 a statement of such assessment to each such public utility on or before  
44 July first and the amount so assessed to each such public utility shall  
45 be paid by it to the director of revenue in full on or before July  
46 fifteenth next following the rendition of such statement, except that  
47 any such public utility may at its election pay such assessment in four  
48 equal installments not later than the following dates next following the  
49 rendition of said statement, to wit: July fifteenth, October fifteenth,  
50 January fifteenth and April fifteenth. The director of revenue shall  
51 remit such payments to the state treasurer.

52       4. The state treasurer shall credit such payments to a special  
53 fund, which is hereby created, to be known as "The Public Counsel  
54 Fund", which fund, or its successor fund created under section 33.571,  
55 RSMo, shall be devoted solely to the payment of expenditures actually  
56 incurred by the public counsel and attributable to the regulation of  
57 such public utilities subject to the jurisdiction of the commission. Any  
58 amount remaining in such special fund or its successor fund at the end  
59 of any fiscal year shall not revert to the general revenue fund, but shall  
60 be applicable by appropriation of the general assembly to the payment  
61 of such expenditures of the public counsel in the succeeding fiscal year  
62 and shall be applied by the public counsel to the reduction of the  
63 amount to be assessed to such public utilities in such succeeding fiscal  
64 year, such reduction to be allocated to each group of public utilities in  
65 proportion to the respective gross intrastate operating revenues of the  
66 respective groups during the preceding calendar year.

67       5. In order to enable the public counsel to make the allocations  
68 and assessments provided for in this section, each public utility subject  
69 to the jurisdiction of the commission shall file with the commission on  
70 or before March thirty-first of each year, a statement under oath  
71 showing its gross intrastate operating revenues for the preceding  
72 calendar year, and if any public utility shall fail to file such statement

73 within the time established in this subsection, the commission shall  
74 estimate such revenue and such estimate shall be binding on such  
75 public utility for the purpose of this section.

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